PUBLIC INQUIRY INTO FOREIGN INTERFERENCE IN FEDERAL ELECTORAL PROCESSES AND DEMOCRATIC INSTITUTIONS

Written submissions of the Russian Canadian Democratic Alliance
with respect to
National Security Confidentiality Hearings

(clause (a)(i)(D) of the Commission's *Terms of Reference*)

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1. The Commission

[1] On September 10, 2023, the Government of Canada adopted Order in Council P.C. 2023-882, establishing Terms of Reference (the "**TOR**") for the Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions (the "**Commission**" or the "**Inquiry**"). Pursuant to clause (a)(i)(D) of its TOR, the Commission held national security confidentiality hearings (the "**NSC Hearings**") during the week of January 29, 2024, during which it heard experts and witnesses, as well as submissions from Participants, on the issues "associated with the disclosure of classified national security information and intelligence to the public, for the purposes of fostering transparency and enhancing public awareness and understanding."

[2] The three-step process for dealing with information "whose disclosure could, in the opinion of the Commissioner, be injurious to the critical interest of Canada or its allies, national defence or national security," is outlined at clause (a)(iii)(C) of the TOR. Pursuant to this process and section 38 of the *Canada Evidence Act*, R.S.C., 1985, c. C-5 (the "***CEA***"), the Commissioner is not empowered to disclose this kind of information and, if she believes that such information should be disclosed, loses her jurisdiction to the Federal Court.[1] In dealing with this information before losing her jurisdiction to the Federal Court, the Commissioner has an important role in negotiating with the Attorney General of Canada ("**AGC**").[2] During these negotiations, the Commissioner needs to determine whether the disclosure of the confidential information would truly be "injurious to the critical interest of Canada or its allies, national defence or national security" and whether the public interest in disclosure outweighs the national security interest in protecting this information. Unfortunately, the

[1] Government of Canada, *Institutional Report on the Protection of Information in the National or Public Interest*, CAN.DOC.000003, p. 18.
[2] Foreign Interference Commission, *Public hearing transcriptions*, Volume 2 – English Interpretation, January 30, 2024, p. 63 l. 15 to p. 64, l. 23.

Commissioner has not communicated any plan that would provide the public or the diaspora an opportunity to contribute to this negotiating process.

[3] In order for a public inquiry to be effective, it is critical that it be open.[3] Further, "the open and public nature of the hearing help[s] to restore public confidence not only in the institution or situation investigated but also in the process of government as a whole."[4] Public inquiries are one of the sole ways the public may be informed, "independently, thoroughly and coherently about the inner working of government."[5]

[4] The Commission has been made aware of the risk of national security confidentiality "overclaiming," as happened during the Arar inquiry.[6] During the NSC Hearings, Richard Fadden, former director of the Canadian Security Intelligence Service ("**CSIS**") and former National Security Advisor stated, in no uncertain terms, that "the culture, the workload and the tradition in [national security] agencies, I think, is to tend towards overprotection."[7]

[5] As mentioned by Commissioner O'Connor in his final report, overclaiming, "[…] exacerbates the transparency and procedural fairness problems that inevitably accompany any proceeding that cannot be fully open because of NSC concerns."[8] Overclaiming also "promotes public suspicion and cynicism about legitimate claims by the Government of national security confidentiality."[9] These concerns are especially relevant in the present Inquiry, which is dealing with allegations that fuel public suspicion in our institutions.

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[3] S. Ruel, *The Law of Public Inquiries in Canada*, Carswell Thomson Reuters, August 30, 2009, at p. 93.
[4] *Id.*
[5] *Id.*
[6] Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the events relating to Maher Arar: Analysis and recommendations* ("**Arar Report**"), 2006, p. 302.
[7] Foreign Interference Commission, *Public hearing transcriptions*, Volume 3 – English Interpretation, January 31, 2024, p. 21, ll. 24-25.
[8] Arar Report, supra note 6, p. 302.
[9] *Id.*

[6] The current legislative framework applicable to national security confidentiality originates in the *Anti-terrorism Act*, adopted in response to the terrorist attacks of September 11, 2001. This legislation's purpose was to provide the Government with tools to address terrorist threats in Canada, including, through section 38 of the *CEA*, a mechanism to adjudicate and protect information that could be "injurious to international relations or national defence or national security" if disclosed in the context of a proceeding. The information covered by this mechanism is therefore much broader in scope than information related to terrorism, and could include most, if not all, information relevant to the Commission's work.

[7] As stated by Commissioner Rouleau and as transpired during the proceedings of the Public Order Emergency Commission, what constitutes threats to the security of Canada can be the source of "much controversy and misunderstanding," including among government officials charged with applying this definition.[10] This controversy and misunderstanding can be particularly challenging for the Government and the Commission when deciding what information is subject to national security confidentiality, and make it difficult for Participants and the public to understand the rationale of certain national security confidentiality claims. Further, challenges in the application of the *CEA*, the *Security of Information Act*, RSC 1985, c O-5, and the *Canadian Security Intelligence Service Act*, RSC 1985, c C-23 ("*CSIS Act*") have led the Government to initiate public consultations to determine "whether to pursue legislative reforms to address evolving [foreign interference] threats."[11] Richard Fadden, Alan Jones and John Forster explained during the NSC Hearings that, from a national security standpoint, foreign interference and terrorism are different threats.[12] Dominic Leblanc himself

[10] Public Order Emergency Commission, *Report, Volume 3: Analysis (Part 2) and Recommendations*, February 2023, pp. 313-315.
[11] Government of Canada, *Reforming the law on foreign interference – Online public consultation*, online: https://www.justice.gc.ca/eng/cons/fi-ie/index.html.
[12] Foreign Interference Commission, *Public hearing transcriptions*, Volume 4 – English Interpretation, February 1, 2024, p. 57, l. 26 to p. 60, l. 27.

acknowledged that the *CSIS Act*, a key piece of legislation in the national security legislative framework, "was showing its age."[13]

[8] The AGC was entrusted with negotiating with the Commissioner regarding claims of national security confidentiality.[14] Further, through subsection 38.03(1) of the *CEA*, Parliament granted a broad discretionary power to the AGC to authorize the disclosure of all or part of information which could not otherwise be disclosed pursuant to subsection 38.02(1) of the *CEA*.

[9] The unique role of the AGC when negotiating or deciding issues related to national security confidentiality is an important consideration. The AGC is unlike any other administrative decision maker. Specifically, in the exercise of his functions, the AGC is "required to act according to the law and the broader public interest, not according to personal or partisan interests."[15] Although the broader public interest can include international relations and national security, it also includes, in the words of former Attorney General of Ontario Roy McMurtry, "protecting and enhancing the fair and impartial administration of justice, […] safeguarding civil rights and maintaining the rule of law."[16] The Government and the Commissioner must be mindful of this distinct role of the AGC when negotiating and deciding claims of national security confidentiality.

2. The Russian Canadian Democratic Alliance

[10] Commissioner Hogue granted standing to the Russian Canadian Democratic Alliance (the "**RCDA**"), because she was "satisfied that understanding [the Russian Canadian] community's experience would further the work of the Commission."[17] The RCDA's core mission is to support the

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[13] Foreign Interference Commission, *Public hearing transcriptions*, Volume 5 – English Interpretation, February 2, 2024, p. 118, l. 19.
[14] *Terms of Reference of the Foreign Interference Commission*, Council P.C. 2023-882, clause (a)(iii)(C).
[15] The Honourable A. Anne McLellan, *Review of the Roles of the Minister of Justice and Attorney General of Canada*, June 28, 2019, p. 10.
[16] *Id.*, at pp. 10-11.
[17] Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institutions, *Decision on standing*, December 4, 2023, para 185.

development of those members of the Russian Canadian supportive of the ideals of democracy, human rights, civil liberties and the rule of law.[18]

[11] The RCDA submits that maximizing transparency in the Commission's proceedings is in the best interest of the diaspora. The RCDA recognizes that protecting certain categories of information, such as human sources or investigative techniques (to the extent that protecting this type of information enables governmental agencies to perform their work more effectively), is in the diaspora's best interest. On the other hand, CSIS Director David Vigneault explained that transparency and accountability also enable secret agencies to perform their work more effectively.[19]

[12] It is certain that at least some information will be protected by national security confidentiality during the Commission's proceedings. The RCDA can only hope that the interest of the diaspora in favour of disclosure will in the end adequately be considered by the Commission and the Government, and reasonably weighed against the national security interest in protecting said information. In this regard, the RCDA adopts Richard Fadden's words addressed to the Commission (but equally applicable to Government): "If you don't develop an interest in diaspora points of view, I think you will be missing an important component of your mandate."[20] In the same vein, the RCDA hopes that when it is decided that information will not be disclosed, that such decisions are explained in reasons notably detailing why the diaspora's interest was not sufficient to justify disclosure.

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[18] Russian Canadian Democratic Alliance, *About Us*: https://rcda.ca/about-us/; [18] D. Volkov and A. Kolesnikov, *My Country, Right or Wrong: Russian Public Opinion on Ukraine*, Carnegie endowment for international peace, September 7, 2022: https://carnegieendowment.org/2022/09/07/my-country-right-or-wrong-russian-public-opinion-on-ukraine-pub-87803.

[19] Foreign Interference Commission, *Public hearing transcriptions*, Volume 4 – English Interpretation, February 1, 2024, p. 128, ll. 4-19.

[20] Foreign Interference Commission, *Public hearing transcriptions*, Volume 3 – English Interpretation, January 31, 2024, p. 61, ll. 15-17.

3. The NSC Hearings

[13] The need for transparency and to consider the public interest in disclosure was unanimously shared (although to different degrees) by all the experts, witnesses, and Participants during the NSC Hearings. This is a remarkable level of consensus for a public inquiry, where the various interests involved are typically more divergent.

[14] This broad public consensus is in line with the TOR. The first clause of the TOR's preamble highlights that the need for transparency "in order to enhance Canadians' trust and confidence in their democracy" is recognized by "the Government of Canada and the leaders of all recognized parties in the House of Commons." The TOR further direct the Commissioner, in conducting the Inquiry and in making reports, to "maximize the degree of public transparency while taking all necessary steps to prevent the disclosure of information whose disclosure could be injurious to the critical interests of Canada or its allies, national defence or national security."[21] This objective is of the utmost importance to the diaspora, which, as the TOR recognize, "may be especially vulnerable and may be the first victims of foreign interference in Canada's democratic processes."[22] To accomplish this crucial objective, the TOR direct the Commissioner to conduct public hearings "to identify the challenges, limitations and potential adverse impacts associated with the disclosure of classified national security information and intelligence to the public, for the purposes of fostering transparency and enhancing public awareness and understanding […]."[23]

[15] Prior to the NSC Hearings, the Commission shared with the Participants 13 documents, redacted "as necessary to permit public disclosure," and a letter from the Government explaining the rationale of the redactions (the "**Redactions Letter**"). The objective of this exercise was to illustrate

[21] *Terms of Reference of the Foreign Interference Commission*, Council P.C. 2023-882, clause (a)(i)(F)(I). See also clause a(iii)(C).
[22] *Terms of Reference of the Foreign Interference Commission*, Council P.C. 2023-882, clause a(i)(C)(II).
[23] *Terms of Reference of the Foreign Interference Commission*, Council P.C. 2023-882, clause (a)(i)(D).

to the Participants and the public what information they should expect to be disclosed during the Commission's proceedings and what considerations the Government takes into account when deciding what information to disclose.

[16] From the outset, the RCDA was concerned that nothing in the Redactions Letter evidenced that the Government considered the public (let alone the diaspora's) interest in disclosure when it decided to redact relevant information contained in the 13 documents (or how this interest was weighed against the Government's interest in nondisclosure). When questioned on that issue, Minister Leblanc explained that Participants and the public should nevertheless have faith that national security agencies are appropriately considering the public interest when deciding whether to disclose information.[24]

[17] Respectfully, the Government missed an important and easy opportunity to reassure the public, and in particular the diaspora, that their interests will be seriously considered and properly weighed when deciding what information to disclose publicly. The RCDA can only hope that the Government will be more forthcoming and transparent in its consideration of the public (and the diaspora's) interest in disclosing relevant information.

[18] Further, the RCDA finds it deplorable that no members of the diaspora were invited to testify or present evidence during the NSC Hearings.[25] During the hearings, much turned on the balancing exercise between the national security interest and the public interest in disclosure. However, except for the expert witnesses, who are impartial, only Government witnesses were invited to testify. The RCDA hopes that the Commission will do more to consider the diaspora's interests during the

[24] Foreign Interference Commission, *Public hearing transcriptions*, Volume 5 – English Interpretation, February 2, 2024, p. 68, l. 21 to p. 69, l. 23.
[25] This option was contemplated by clause (a)(i)(D): "during which hearings the Commissioner should seek to hear from a range of stakeholders, including senior federal public service officials from the legal and national security and intelligence community, academic and legal experts and other stakeholders, as deemed appropriate by the Commissioner."

remainder of its mandate. As Richard Fadden said during the NSC Hearings: "I very much hope that you don't miss the opportunity of speaking with diaspora representatives."[26]

[19] It is apparent from the Redactions Letter and the 13 redacted documents that the Government believes that a significant proportion of relevant information should not be released publicly. Further, CSIS Director David Vigneault acknowledged that the released information was very general in nature, or at least that it could create that perception.[27]

[20] Another issue pertains to the Government's statement, in the Redactions Letter, that it "would, if necessary, object to any further disclosure of the information contained in the sample documents pursuant to section 38 of the *CEA* were the Inquiry to insist on its public disclosure." The RCDA is troubled that the Government is protecting information to which it would not necessarily raise an objection if the Inquiry was to insist on disclosure. The RCDA believes that such information should be proactively disclosed by the Government.

[21] During the NSC Hearings, despite the notable absence of diaspora witnesses, evidence nevertheless revealed that foreign powers disproportionately target members of diaspora communities, notably through "threats, manipulation and coercion."[28] These actions not only undermine the individual freedoms of diaspora members (as recognized by CSIS Director David Vigneault),[29] but also create an atmosphere of fear and mistrust within these communities (as clearly stated by Richard Fadden).[30] Evidence also makes clear that transparency regarding foreign interference empowers

[26] Foreign Interference Commission, *Public hearing transcriptions*, Volume 3 – English Interpretation, January 31, 2024, p. 62, l. 16-18.
[27] Foreign Interference Commission, *Public hearing transcriptions*, Volume 4 – English Interpretation, February 1, 2024, p. 130, ll. 1-12.
[28] Foreign Interference Commission, *Public hearing transcriptions*, Volume 4 – English Interpretation, February 1, 2024, p. 132, l. 7-20; CSIS, *Foreign Interference and you*, RCD-7, p. 3.
[29] Foreign Interference Commission, *Public hearing transcriptions*, Volume 4 – English Interpretation, February 1, 2024, p. 134, ll. 19-28.
[30] Richard Fadden: "members of some diasporas are just plain scared." Foreign Interference Commission, *Public hearing transcriptions*, Volume 3 – English Interpretation, January 31, 2024, p. 62, ll. 5-6.

diaspora communities (or to use Government's terms, "builds resilience"), enabling them to understand, weigh and respond to threats posed by foreign interference and engage in democratic processes more securely and informedly.[31]

[22] The RCDA is cautiously encouraged by the apparent evolution in the Government's position regarding the disclosure of relevant information. In its closing submissions, the Government recognized that "the public interest in this discussion" includes fundamental rights and freedoms[32] and undertook to adopt an approach that "is not business as usual."[33] It was also highlighted that "there has been an ongoing shift in the government towards openness of national security information."[34] The RCDA can only hope that this shift will be more apparent during the next steps of the Commission's proceedings.

4. The RCDA's interest and *Charter* protections

[23] Diaspora communities often find themselves uniquely vulnerable to foreign interference. As acknowledged by CSIS Director David Vigneault, this is not just a matter of external influence but a direct attack on their civil liberties and freedom.[35] It follows that the RCDA has an interest in any information relevant to the Commission's mandate, and to an even higher degree, any information that concerns potential or actual limits to *Charter* protections from which the Russian Canadian community benefits, including protections guaranteed by sections 2, 3, 7 and 15.

[24] The Supreme Court of Canada recently reaffirmed that "administrative decision makers have an obligation to consider the values relevant to the exercise of their discretion, in addition to respecting

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[31] Foreign Interference Commission, *Public hearing transcriptions*, Volume 5 – English Interpretation, February 2, 2024, p. 12, l. 27 to p. 14, l. 16.
[32] *Id.*, p. 124, ll. 15-17.
[33] *Id.*, p. 125, ll. 5-6.
[34] *Id.*, p. 124, ll. 22-23.
[35] Foreign Interference Commission, *Public hearing transcriptions*, Volume 4 – English Interpretation, February 1, 2024, p. 134, ll. 19-28.

Charter rights."[36] More specifically, this framework applies where an administrative decision "simply engages a value underlying one or more *Charter* rights, without limiting these rights."[37] Professor Pierre Trudel confirmed during the NSC Hearings that these *Charter* protections need to be taken into consideration by Government and the Commission not only when deciding not to disclose information, but throughout the process leading to such decisions.[38] When a decision touches on *Charter* protections, the decision maker must undertake a proportionate balancing of the protections involved with the relevant factual and legal constraints.[39] According to the Supreme Court, there can be no doubt about this, because "[t]he Constitution — both written and unwritten — dictates the limits of all state action."[40]

[25] Section 2 freedoms protect "rights fundamental to Canada's liberal democratic society," including, at subsection 2(b), the "freedom of thought, belief, opinion and expression."[41] Freedom of expression promotes the search for and attainment of truth, participation in social and political decision-making, and the diversity in forms of individual self-fulfillment.[42] As stated by the Supreme Court, "freedom of expression is a crucial aspect of the democratic commitment"; "it permits the best policies to be chosen from among a wide array of proffered options [and] it helps to ensure that participation in the political process is open to all persons."[43]

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[36] *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 ("***Commission scolaire francophone des Territoires du Nord-Ouest***"), paras 65.
[37] *Id.,* para 64.
[38] Foreign Interference Commission, *Public hearing transcriptions*, Volume 2 – English Interpretation, January 29, 2024, p. 93, ll. 17-20.
[39] *Commission scolaire francophone des Territoires du Nord-Ouest,* supra note 36, para 73.
[40] *Id.*, para 65. This statement resonates with the unwritten constitutional principles, including the principles of constitutionalism and rule of law, both of which require that all government action comply with the Constitution. See *Reference re Secession of Quebec*, [1998] 2 SCR 217 ("***Re Secession***"), para 72; *Roncarelli v. Duplessis*, [1959] S.C.R. 121, p. 142; *Operation Dismantle Inc. v. The Queen*, [1985] 1 S.C.R. 441, p. 455.
[41] *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, para 48.
[42] *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, p. 976.
[43] *R. v. Keegstra*, [1990] 3 S.C.R. 697, pp. 763-64.

[26] One of the first objectives of foreign interference in Canada's democratic process is to "control messaging that is supportive of Canada's values, policies, or practices; silence dissenting views or opinions of the foreign state or issues that do not support their strategic objectives; and amplify their own favourable messaging."[44] A stark and recent example of this kind of influence is the case of Maria Kartasheva, whose Canadian citizenship application was jeopardized as a result of publishing blog posts criticizing the war in Ukraine while she was in Canada.[45] The deleterious effect of foreign interference on freedom of expression was recognized by the Government in its closing submissions.[46]

[27] Beyond targeting individuals, foreign states can also target associations of the diaspora, like the RCDA, which would limit the freedom of association recognized at subsection 2(d) of the *Charter*. This is not theoretical.[47] Freedom of association is especially important to protect individuals against more powerful entities by allowing them to band together and prevent these entities from thwarting their legitimate goals and desires.[48]

[28] Inextricably linked with the protection of freedom of expression under section 2(b) of the *Charter* is the open court principle, which is applicable to this Commission.[49] In *Sherman Estate v. Donovan*, 2021 SCC 25, the Supreme Court deemed the open court principle "essential to the proper functioning of our democracy" notably because it discourages mischief and ensures confidence in the

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[44] Canadian Security Intelligence Service, *Foreign Interference Threats to Canada's Democratic Process*, July 2021: https://www.canada.ca/content/dam/csis-scrs/documents/publications/2021/foreign-interference-threats-to-canada%27s-democratic-process.pdf, p. 8.
[45] M. Kupfer, *Canada backtracks on citizenship review for Russian antiwar activist*, CBC News, January 9, 2024: https://www.cbc.ca/news/canada/ottawa/maria-kartasheva-russia-citizenship-conviction-canada-1.7078560.
[46] Foreign Interference Commission, *Public hearing transcriptions*, Volume 5 – English Interpretation, February 2, 2024, p. 124, ll. 15-17.
[47] The Supreme Court of Russia, following a motion from the Russian justice ministry, recently declared that "the international LGBT public movement" is an extremist organization and banned its activities across the country: S. Rosenberg, *Russian court bans 'LGBT movement'*, BBC News, November 30, 2023: https://www.bbc.com/news/world-europe-67565509.
[48] *Mounted Police Association of Ontario v. Canada*, 2015 SCC 1, para. 58.
[49] *Toronto Star v. AG Ontario*, 2018 ONSC 2586, paras 54-55; Rouleau decision regarding Jeremy MacKenzie, paras 14-18; S. Ruel, *The Law of Public Inquiries in Canada*, supra note 3, pp. 97-98.

administration of justice through transparency.[50] The open court principle takes on particular importance in relation to public inquiries.[51] Finally, foreign interference can also elicit strong domestic governmental responses in the name of national security, including increased monitoring of communications and other endangerment or restrictions of freedoms guaranteed by section 2 of the *Charter*.

[29] Interference with the capacity of each citizen to play a meaningful role in the electoral process is also inconsistent with section 3 of the *Charter*.[52] According to CSIS, the goals of foreign interference are notably to "suppress voter participation," "influence election outcomes," "reduce public confidence in the outcome of an electoral process," "discredit democratic institutions," and "erode confidence in democracy," all of which can limit section 3 protections.[53] Unredacted information contained in one of the 13 sample documents clearly indicate that Russia has been "discrediting democratic institutions and processes, with an ultimate goal of destabilizing or delegitimizing democratic states."[54] The impact of foreign interference on democratic rights was recognized by the Government in its closing submissions.[55]

[30] Courts have found that the process provided by section 38 of the *CEA* is largely consistent with section 7 of the *Charter*.[56] However, one important consideration in favour of the constitutionality of the section 38 process, namely the *CEA*'s protections regarding the right to a fair trial, are largely irrelevant in the context of this Inquiry.[57] For instance, the risks of infringement of *Charter* protections

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[50] *Id.*, paras 30 and 44.
[51] *Episcopal Corporation of the Diocese of Alexandria-Cornwall v. Cornwall Public Inquiry*, 2007 ONCA 20, para 48.
[52] *Figueroa v. Canada (Attorney General)*, 2003 SCC 37, para 36; See also the unwritten constitutional principle of democracy in *Re Secession*, supra note 40, at para 62.
[53] CSIS, *Foreign Interference Threats to Canada's Democratic Process,* supra note 44, at p. 7.
[54] SITE TF, *Update of Foreign Interference Threats to Canadian Democratic Institutions – 2021*, CAN005824, at p. 4.
[55] Foreign Interference Commission, *Public hearing transcriptions*, Volume 5 – English Interpretation, February 2, 2024, p. 124, ll. 15-17.
[56] *Canada (Attorney General) v. Khawaja*, 2007 FC 463; *Canada (Attorney General) v. Khawaja*, 2007 FCA 388.
[57] Foreign Interference Commission, *Public hearing transcriptions*, Volume 2 – English Interpretation, January 30, 2024, p. 109, ll. 14-28.

cannot be remedied through a stay of proceedings, an amendment to an indictment or by limiting the information provided in relation to an indictment.[58] The life, liberty and security risks that the diaspora is facing as a result of foreign interference will persist until the diaspora obtains the information it needs and until foreign interference is limited through proper measures. Section 7 imposes a duty to disclose information in the case of proceedings that may have severe consequences.[59] CSIS Director David Vigneault agreed that members of the diaspora need to have access to information related to the Commission's mandate to better protect themselves against threats to their fundamental rights and freedoms.[60]

[31] The purpose of section 15 of the *Charter* is "the promotion of a society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect and consideration."[61] Enumerated grounds under section 15 include "race, national or ethnic origin." Non-citizenship was recognized as an analogous ground to those enumerated in section 15(1).[62] The TOR specifically recognize that members of the diaspora "may be especially vulnerable and may be the first victims of foreign interference in Canada's democratic processes." There was a broad consensus during the NSC Hearings that diaspora members are particularly affected by foreign interference.[63]

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[58] *CEA*, s. 38.14(2).
[59] *Charkaoui v. Canada (Citizenship and Immigration*, [2008] 2 S.C.R. 326, paras 56-58.
[60] Foreign Interference Commission, *Public hearing transcriptions*, Volume 4 – English Interpretation, February 1, 2024, p. 134, l. 19-28.
[61] *R. v. Kapp*, [2008] 2 S.C.R. 483, para 15 citing *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 ("***Andrews***"), p. 171. This is consistent with the unwritten constitutional principle of protection of the minorities, see *Re Secession*, supra note 40, at para 81.
[62] *Andrews*, supra note 61; *Lavoie v. Canada*, [2002] 1 S.C.R. 769.
[63] For instance, Dr. Leah West pointed out that "lack of trust in our institutions is probably at its greatest in a number of diaspora communities and ethnic minority groups across Canada: *Public hearing transcriptions*, Volume 2 – English Interpretation, p. 108, ll. 13-20. See also *Public hearing transcriptions*, Volume 4 – English Interpretation, p. 132, l. 25.

5. Proposed techniques to facilitate disclosure and foster public trust

[32] The RCDA submits that the Commissioner should consider two techniques to facilitate disclosure and foster public trust, namely a) permitting counsel with the appropriate security clearance to participate in *in camera* hearings and to consult relevant documents, as well as b) assigning a commission counsel (or a team) tasked exclusively with critically reviewing redactions by the Government, and where appropriate challenging them. These two additional techniques would facilitate disclosure of information (without filtering occasioned by redactions, summaries, and statements of fact) and limit infringements on *Charter* protection, without significantly impacting the Inquiry's timelines.

6. Conclusion

[33] The NSC Hearings highlighted (1) the disproportionate impact of foreign interference on diaspora communities, (2) the pivotal role of these communities' interests in the disclosure of sensitive information, and (3) the critical importance of these considerations to the fulfillment of the Commission's mandate. Decisions limiting disclosure of information potentially harmful to national security need to balance the public interest in disclosure and the *Charter* protections involved. For the reasons outlined above, the RCDA believes that this balancing exercise will often favour disclosure.

[34] This Inquiry presents a crucial opportunity not only to reaffirm, but also to solidify Canada's commitment to the principles of democracy, transparency, and the protection of civil liberties. The way to seize that opportunity is to ensure maximum transparency, which starts by seriously taking into consideration the interests of the segment of the population that is most directly and personally impacted by foreign interference: the diaspora communities. The integrity of our democratic processes and the trust of Canadians depend on it.